

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROBERT FUSARI

Plaintiff,

v.

400 WEST 59TH STREET PARTNERS, LLC;
THE BRODSKY ORGANIZATION, LLC;
YOVANNY DE LA CRUZ aka Yovanny De La Cruz
Guzman; JOHN DOES 1-20, individually and as
owners, officers, directors, shareholders, founders,
managers, agents, servants, employees, representatives
and/or independent contractors of 400 WEST 59TH
STREET PARTNERS, LLC and/or THE BRODSKY
ORGANIZATION, LLC; and, UNKNOWN
ENTITIES 1-10,

Defendants.

SUMMON AND COMPLAINT


Index No. _____
Plaintiff designates
NEW YORK County
as the place of trial based on location
where cause of action accrued

Plaintiff resides at 260 East Mt.
Pleasant Ave, Livingston, NJ 07039

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiffs Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: January 4, 2019


BY: **THOMAS S. MIRIGLIANO, ESQ.**
This SUMMONS & COMPLAINT
and the papers on which it is based,
are certified pursuant to
Section 130-1.1-1 of the rules of the
Chief Administrator (22NYCRR)
SCHILLER MCMAHON LLC
Attorneys for the Plaintiff
123 South Avenue East
Westfield, NJ 07090
(908) 233-4840

Defendants Addresses:

400 West 59th Street Partners, LLC
400 W. 59th Street
New York, NY 10019

The Brodsky Organization, LLC
400 W. 59th Street
New York, NY 10019

Yovanny De La Cruz
aka Yovanny De La Cruz
400 W. 59th Street
New York, NY 10019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROBERT FUSARI,

Plaintiff,

v.

400 WEST 59TH STREET PARTNERS, LLC;
THE BRODSKY ORGANIZATION, LLC;
YOVANNY DE LA CRUZ aka Yovanny De La Cruz
Guzman; JOHN DOES 1-20, individually and as
owners, officers, directors, shareholders, founders,
managers, agents, servants, employees, representatives
and/or independent contractors of 400 WEST 59TH
STREET PARTNERS, LLC and/or THE BRODSKY
ORGANIZATION, LLC; and, UNKNOWN
ENTITIES 1-10,

Defendants.

Index No.

VERIFIED COMPLAINT

Plaintiff, ROBERT FUSARI, by his attorneys, Schiller McMahon LLC, for his
Complaint, respectfully alleges on information and belief:

PARTIES

1. During the time of the events which are the subject matter of this complaint, Plaintiff Robert Fusari ("Plaintiff") was an individual residing in New York, New York. Plaintiff presently resides in Livingston, New Jersey.
2. That during the time heretofore and at all times hereinafter mentioned, the Defendant 400 West 59th Street Partners, LLC ("400 West 59th") was and still is a domestic corporation organized under the laws of the State of New York, with its principal place of business in New York, New York.

3. That during the time heretofore and at all times hereinafter mentioned, the Defendant The Brodsky Organization, LLC (“Brodsky”) was and still is a domestic corporation organized under the laws of the State of New York, with its principal place of business in New York, New York.

4. That during the time heretofore and at all times hereinafter mentioned, Defendant Yovanny De La Cruz aka Yovanny De La Cruz Guzman (“De La Cruz”) resides in New York City and was employed by Defendants 400 West 59th and Brodsky (collectively referred to as the “building”).

5. John Does 1 through 20 are gender-neutral, fictitious individuals intended to be those owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of Defendants Brodsky and/or 400 West 59th, or who otherwise benefited at the expense of Plaintiff as described in the Complaint herein. As these defendants are identified, Plaintiff shall amend the Complaint to include them.

6. Unknown Entities 1 through 10 are fictitious entities, the names of which are currently unknown to Plaintiff, but intended to be those which the named defendants subcontracted work, or which otherwise benefited at the expense of Plaintiff as described in the Complaint herein. As these defendants are identified, Plaintiff shall amend the Complaint to include them.

7. The Defendants may be referred to as “Defendants” in the aggregate.

8. Upon information and belief, that during the time heretofore and at all times hereinafter mentioned, Baya Inc. (“Baya”) was and still is a domestic corporation organized under the laws of the State of New York, with its principal place of business in Queens County, New York.

9. Upon information and belief, that during the time heretofore and at all times hereinafter mentioned, Ronan Kearney was Director of Management at Defendant Brodsky.

10. Upon information and belief, that during the time heretofore and at all times hereinafter mentioned, City Marshal Matthew Regan and City Marshal Justin P. Grossman were both New York City Marshals, appointed by the Mayor of the City of New York.

JURISDICTION AND VENUE

11. Venue is proper in New York County pursuant to CPLR 503(a) as it is the county in which a substantial part of the events giving rise to the claim occurred.

12. Further, venue is proper in New York County pursuant to CPLR 503(a) as it is where both Defendants 400 West 59th and Brodsky reside.

FACTS COMMON TO ALL CAUSES OF ACTION

13. Upon information and belief, Defendant 400 West 59th is the owner of the apartment building located at 1 Columbus Place, New York NY 10019 (referred to as “1 Columbus Place”, the “building”, or the “premises”).

14. Upon information and belief, Defendant Brodsky is the management company for 1 Columbus Place.

15. Plaintiff Fusari was a long-time tenant of 1 Columbus Place, New York NY 10019, Apt. S31B (the “Apartment”).

16. Plaintiff is a Grammy-winning record producer and songwriter who has produced songs for well-known, prominent recording artists.

17. Due to Plaintiff’s work schedule, he often travelled for much of the year.

18. As Plaintiff was largely absent, he rarely made monthly rent payments. Instead, the building would periodically contact the Plaintiff every few months with an accounting of what

was due. Plaintiff would then make payment for several months at one time. For years, this was the established course of dealing between Plaintiff and the building.

19. Sometime in early 2017, unbeknownst to Plaintiff, the building began eviction proceedings to remove him from the apartment.

20. At the time, Plaintiff was travelling on business. Despite corresponding with Plaintiff via e-mail and phone for years, Plaintiff was never contacted about the eviction.

21. As Plaintiff was unaware of the eviction, he had never removed his possessions from the apartment. Thus, a Marshal, from the City of New York was required to conduct an inventory.

22. On or about March 21, 2017, City Marshal Matthew Regan, filling in for City Marshal Justin P. Grossman ("Marshal Grossman"), conducted the inventory.

23. Pursuant to the New York City Marshals Handbook of Regulations, Chapter 4, Section 6-5, entitled "Inventory of Property," all marshals are required to prepare a written inventory of all items contained in the premises of any tenant to be evicted. This includes all appliances and the marshal is required to give a description and condition of each item in the apartment.

24. Marshal Grossman did not conduct a proper inventory. While the Marshal inventory lists inspection of Plaintiff's kitchen cabinets, chairs table, stools, refrigerator and microwave oven, Marshal Grossman did not inspect the stove and/or oven.

25. Pursuant to the New York City Marshals Handbook of Regulations, Chapter 4, Section 6-5, entitled "Inventory of Property," in the event money is discovered, the marshal must leave it in the custody of the local police precinct.

26. At the conclusion of the inventory conducted by Marshal Grossman, there was no documentation that any money was found. An agent for landlord Defendant 400 W. 59th St. agreed in writing to release Marshal Grossman from any liability and assume full responsibility for all property on the premises.

27. Later that day, Baya Inc. was hired by the building to move and store the contents of the apartment.

28. As Baya Inc. was finishing the move and the apartment was empty, an employee of the building who was present told them, “there’s money in the oven.”

29. Inside the oven was a locked, heavy-duty Husky storage case (the “case”). Mysteriously, the buildings’ employee knew there was money inside the locked case.

30. Much later, when the Plaintiff was able to obtain and inspect the case, it was discovered that someone had used a tool to remove a piece of the case to pry it open and access its contents. The lock remained intact.

31. The New York City Police Department (“NYPD”) was contacted by the building to take custody of the case and its contents.

32. Upon investigation, the NYPD discovered \$85,300.00 inside the tampered case and held it for safekeeping.

33. NYPD Officer Edward Raso identified Defendant Yovanny De La Cruz aka Yovanny De La Cruz Guzman, an employee of the building, as the finder of the property.

34. The following day, miraculously, Ronan Kearney (“Kearney”) of Defendant Brodsky was able to get in contact with the Plaintiff via e-mail to inform Plaintiff that he had been evicted and that money had been located.

35. Kearney contradicted the findings of the NYPD. Instead, he attempted to shift the blame to the moving company, Baya, Inc., alleging, that a moving company located the personal property of the Plaintiff inside an appliance while removing his belongings.

36. Words could not describe Plaintiff’s shock when he discovered what transpired. Plaintiff had no idea he was being evicted. For years, Plaintiff would periodically make payments for

several months at a time without incident. This entire situation could have been resolved by a simple phone call, or e-mail, as they had done in the past.

37. Even more shocking was someone from the building had broken into the case. The case did not originally contain \$85,300.00, but \$350,000.00. A total of \$264,700.00 had been stolen.

38. It has been established by both the NYPD and Baya, Inc. that it was an employee of the building that located the briefcase.

39. Additionally, Baya, Inc. has confirmed that the case was already broken when they arrived, and the building staff already knew of its contents.

AS AND FOR A FIRST CAUSE OF ACTION
(Conversion)

40. Plaintiff repeats and re-alleges each and every allegation as if fully set forth herein.

41. As set forth above, Defendants have engaged in acts designed to misappropriate and convert \$264,700.00 of Plaintiff's funds for themselves.

42. As a result of their wrongful acts set forth above, Defendants have exercised unauthorized dominion and control over Plaintiff's assets, to the exclusion of Plaintiff's rights, and to Plaintiff's detriment.

43. Plaintiff has made a demand for the return of the stolen funds, and the Defendants' refusal to return the funds to its true owner created the underlying cause of action in conversion.

44. As a direct and proximate result of this misconduct, Plaintiff has sustained substantial losses and damages totaling \$264,700.00.

45. Defendants' conduct was intentional, wanton, malicious, fraudulent and shocking to the conscience, and was perpetrated in total disregard for Plaintiff's rights. By reason of the foregoing, Defendants should be liable, jointly and severally, for the \$264,700.00 in stolen funds, plus punitive damages in the amount of at least \$1,000,000.00, so as to deter themselves and

others similarly inclined from perpetrating in the future such acts of misconduct as were committed by the defendants, plus prejudgment interest, the precise amount to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

46. Plaintiff repeats and re-alleges each and every allegation as if fully set forth herein.

47. As set forth above, Defendants were responsible for safeguarding Plaintiff's property and assumed full responsibility for the property. This included the duty to: (a) to refrain from converting Plaintiff's \$264,700.00 in funds for their own use; (b) not to engage in activities detrimental to the safe return of Plaintiff's property; (c) to prevent loss or damage to Plaintiff's property; and (d) not to misappropriate Plaintiff's property.

48. As more fully described above, the defendants have breached their fiduciary duty.

49. As a direct and proximate cause of the Defendants' actions, Plaintiffs have sustained substantial losses and damages of \$264,700.00.

50. The Defendants' conduct was intentional, wanton, malicious, fraudulent and shocking to the conscience, and was perpetrated in total disregard for the Plaintiff's rights. By reason of the foregoing, defendants should be liable, jointly and severally, for the \$264,700.00 in stolen funds, plus punitive damages in the amount of at least \$1,000,000.00, so as to deter themselves and others similarly inclined from perpetrating in the future such acts of misconduct as were committed by the defendants, plus prejudgment interest, the precise amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment)

51. Plaintiff repeats and re-alleges each and every allegation as if fully set forth herein.
52. As detailed above, Defendants obtained \$264,700.00 in stolen funds. Defendants have exercised dominion and control over such funds and converted them for their own purpose.
53. By reason of the foregoing, the Defendants have been unjustly enriched in the amount of \$25,000.00.
54. Defendants acts in converting Plaintiffs' funds rose to the level of criminal conduct for which punitive damages should be awarded in excess of the amount converted.
55. The Defendants' conduct was intentional, wanton, malicious, fraudulent and shocking to the conscience, and was perpetrated in total disregard for the Plaintiff's rights. By reason of the foregoing, defendants should be liable, jointly and severally, for the \$264,700.00 in stolen funds, plus punitive damages in the amount of at least \$1,000,000.00, so as to deter themselves and others similarly inclined from perpetrating in the future such acts of misconduct as were committed by the defendants, plus prejudgment interest, the precise amount to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION
(Respondeat Superior)

56. Plaintiff repeats and re-alleges each and every allegation as if fully set forth herein.
57. Defendants are vicariously liable for the acts of their employees who engaged in acts designed to misappropriate and convert \$264,700.00 in Plaintiff's funds, while in the course of their employment.
58. The acts of Defendants' employees were committed within the scope of the employee's employment.

59. The acts of Defendants' employees were generally foreseeable and a natural consequence of the employment.

60. The acts of Defendants' employees could have been reasonably anticipated.

61. Defendants are liable, as above, for the wrongful acts of the Defendants, even if committed outside the scope of their employment.

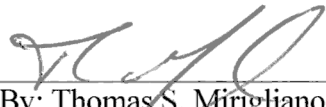
62. The misappropriation and conversion of the \$264,700.00 in Plaintiff's funds were caused solely and wholly by reason of the negligence and carelessness of Defendants in the ownership, operation, management, maintenance, control, security and supervision of the premises and employees within the premises.

63. The acts of Defendants' employees were intentional, wanton, malicious, fraudulent and shocking to the conscience, and was perpetrated in total disregard for the Plaintiff's rights. By reason of the foregoing, Defendants should be liable, jointly and severally, for the \$264,700.00 in funds stolen by their employees, plus punitive damages in the amount of at least \$1,000,000.00, so as to deter themselves and others similarly inclined from perpetrating in the future such acts of misconduct as were committed by the defendants, plus prejudgment interest, the precise amount to be determined at trial.

WHEREFORE, the Plaintiff, ROBERT FUSARI, respectfully requests a judgment against the Defendants 400 WEST 59TH STREET PARTNERS, LLC and THE BRODSKY ORGANIZATION, LLC: (i) on the first cause of action against all Defendants, jointly and severally, awarding damages in an amount to be determined at trial and in no event less than \$264,700.00 plus interest thereon; (ii) on the second cause of action against all Defendants, jointly and severally, awarding damages in an amount to be determined at trial and in no event less than \$264,700.00 plus interest thereon; (iii) on the third cause of action against all Defendants, jointly and severally, awarding damages in an amount to be determined at trial and in no event less than

\$264,700.00 plus interest thereon, (iv) on the fourth cause of action against all Defendants, jointly and severally, awarding damages in an amount to be determined at trial and in no event less than \$264,700.00 plus interest thereon, (v) awarding Plaintiff the costs of disbursements of the action, including reasonable attorney's fees; and (vi) granting Plaintiff such other and further relief as the Court deems just and proper.

Dated: January 4, 2019


By: Thomas S. Mirigliano, Esq.
Schiller McMahon LLC
123 South Avenue East, 2nd Floor
Westfield, NJ 07090
(908) 233-4840
Attorneys for Plaintiff Robert Fusari

STATE OF NEW JERSEY)
COUNTY OF UNION)

The undersigned, an attorney, admitted to practice in the Courts of the State of New York, affirms that the following statements are true under the penalties of perjury.

That deponent is associated with the attorneys for the plaintiff in the within action; that deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; that same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by plaintiff is that plaintiff resides outside of the County where your deponent holds his office.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Information and investigation contained in the file maintained by this office.

DATED: Westfield, New Jersey
January 4, 2019



THOMAS S. MIRIGLIANO, ESQ.

Index No.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROBERT FUSARI,

Plaintiff

-against-

400 WEST 59TH STREET PARTNERS, LLC; THE BRODSKY ORGANIZATION, LLC and YOVANNY DE LA CRUZ aka Yovanny De La Cruz Guzman; JOHN DOES 1-20, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of 400 WEST 59TH STREET PARTNERS, LLC and/or THE BRODSKY ORGANIZATION, LLC; and, UNKNOWN ENTITIES 1-10,

Defendants

VERIFIED COMPLAINT

SCHILLER MCMAHON

Attorneys for Defendant

Office and Post Office Address, Telephone, Facsimile
123 South Avenue East | 2nd Floor

Westfield, New Jersey 07090

TELEPHONE: (908) 233-4840

FACSIMILE: (908) 935-0822

“WE DO NOT ACCEPT SERVICE BY ELECTRONIC TRANSMISSIONS (FAX)”

SCHILLER MCMAHON
Attorneys for Plaintiff
123 South Avenue East
Second Floor
Westfield, New Jersey 07090
(908) 233-4840